

STATE OF IOWA
PROPERTY ASSESSMENT APPEAL BOARD

MMTD, LLC,
Petitioner-Appellant,

v.

Pottawattamie County Board of Review,
Respondent-Appellee.

ORDER

Docket No. 09-78-0759
Parcel No. 7444-02-228-007

On January 4, 2011, the above-captioned appeal came on for hearing before the Iowa Property Assessment Appeal Board. The appeal was conducted under Iowa Code section 441.37A(2)(a-b) and Iowa Administrative Code rules 701-71.21(1) et al. Petitioner-Appellant, MMTD, LLC, requested its appeal be considered at hearing. It is represented by owner and attorney Thomas Lustgraaf. The Board of Review designated Assistant Pottawattamie County Attorney Leanne H. Gifford as its legal representative. MMTD, LLC submitted documentary evidence to support its position. The Appeal Board now having examined the entire record, heard the testimony, and being fully advised, finds:

Findings of Fact

MMTD, LLC (MMTD), owner of property located at 1117 16th Avenue, Council Bluffs, Iowa, appeals from the Pottawattamie County Board of Review decision reassessing its property. According to the property record card, the subject property consists of a one-story restaurant having a 3603 square-foot base. The improvements include 13,390 square feet of concrete paving, 6000 square feet of asphalt paving, and two open porches. The building is in normal condition and is situated on a 0.69 acre (30,240 square feet) site. The card indicates the improvements were built in 2000. The real estate was classified as commercial on the initial assessment of January 1, 2009, and valued at \$425,000, representing \$30,000 in land value and \$395,000 in improvement value.

MMTD protested to the Board of Review on the grounds: (1) that the property is assessed for more than the value authorized by law under Iowa Code section 441.37(1)(b), and (2) that there had been a downward change in value under sections 441.37(1) and 441.35(3). It claimed \$200,000 was the actual value and a fair assessment of the property. The Board of Review denied the protest.

MMTD then appealed to this Board and claimed that the property is assessed for more than the value authorized by law.

Thomas Lustraaf testified that MMTD purchased the property which is the subject of this appeal in June 2007 for \$254,500 as part of a multi-parcel purchase. The combined purchase included the subject property, which then consisted of three separate parcels (restaurant #744 02 228 007, parking lot #744 02 228 010 & parking lot #744 02 228 011). In addition, two unimproved lots (#744 02 228 006 & #744 02 228 009), two residential properties, and the business value of the restaurant were also purchased at the same time. Subsequently, the subject property's three parcels were combined into one parcel and designated #744 02 228 007 for the 2009 assessment.

The property record card shows the combined assessed value of the subject property parcels increased significantly from \$254,500 in 2008 to \$425,000 in 2009 after the sale. Lustraaf testified that the purchase was an arms-length transaction and no improvements were made after the purchase. He stated no explanation was given by the assessor for the increased assessments and it was his assumption the sale triggered the sharp value increase. He reported the Declaration of Value (DOV) filed showed a sale price of \$575,000 and the assessor's office attributed the entire price to the subject property, while this price also included the separately assessed two unimproved lots, two residential properties and the restaurant business value (going concern). He recently found out an employee at the title company had filled out the DOV without his or the sellers' knowledge. Lustgraaf provided a copy of the purchase agreement and an appraisal showing the following allocation of value:

Parcel #	Description	Land Value	Improve Value	Total Value
744-02-228-006	Unimproved	\$ 4,480		\$ 4,480
744-02-228-009	Unimproved	\$ 6,406		\$ 6,406
744-02-228-011	Parking	\$ 7,150	\$ 12,350	\$ 19,500
744-02-228-010	Parking	\$ 10,300	\$ 24,700	\$ 35,000
744-02-228-007	Restaurant	\$ 12,500	\$ 187,500	\$ 200,000
744-02-228-013	Residential			\$ 44,800
744-02-228-012	Residential			\$ 39,234
	Business Value			\$ 225,580
	Total Purchase			\$ 575,000

Although a 15% state equalization order was issued for 2009, Lustgraaf provided the Board of Review decision removing it. No one testified on behalf of the Board of Review to explain the reason for the significant assessment increase between 2008 and 2009.

An appraisal prepared by Richard K. See and Kevin Hermesen of Mitchell & Associates, Inc. in Council Bluffs, Iowa was offered on behalf of MMDT. See and Hermesen inspected the property on July 31, 2007 and arrived at a final valuation of \$260,000 as of that date. The appraisal excludes fixtures, furniture, equipment and business enterprise or going concern value and additional properties that were part of the purchase transaction. The cost approach valued the property at \$270,000. The income approach was not developed because the location of the property made it only suitable for owner-occupant use.

The appraisal reports the subject property is a 1.13 acre (49,380 square foot) corner site located within a residential neighborhood with residences abutting in all directions.¹ The subject property is described as a 3603 square foot, one-story commercial restaurant building constructed in 2000 and operated as Jonesy's Taco House. The property features an entry vestibule, built-in bar, dining areas,

¹ The property record card indicates the subject property is 0.69 acres (30,240 square feet). The appraisal includes the two adjacent unimproved lots (744-02-228-006 & 744-02-228-009) increasing the site size by 0.44 acres (19,140 square feet).

full-service kitchen with walk-in cooler/freezer, dry storage area, small office, and restrooms.

According to the appraisal, the property received adequate maintenance and was in good condition.

In developing the cost approach, six land sales were used as comparables. The indicated sale values ranged from \$0.92 to \$11.67 per square foot. The sale prices were adjusted for site, location, zoning access and topography. Excluding the outlier, the \$11.67 per square foot sale price, the range is \$0.92 to \$5.14 per square foot. A market value of \$2.00 per square foot was estimated for the subject land after the adjustments. This resulted in an estimated land value of \$99,000. Replacement cost of improvements, including built-in restaurant equipment, was estimated based on the *Marshall Valuation Service*. The estimated cost of the subject new, using this method was \$91.94 per square foot, or \$371,260. This value was reduced by physical depreciation and external obsolescence to yield a depreciated replacement cost of \$108,055. In addition, the appraisers added depreciated site improvements of \$50,000 and 15% entrepreneurial profit. The external obsolescence of 50% was based on the subject property's location in a residential neighborhood. The rounded total value including land and the depreciated cost of improvement was \$270,000.

The appraisers developed the sales approach to value using four Nebraska restaurant sales occurring in 2005 and 2003. The report importantly notes there were no comparable sales in Council Bluffs. Therefore, the appraiser used sales from the larger Omaha Metropolitan Area. We find these sales are not incomparable because they are some distances from Council Bluffs. *Bartlett & Co. Grain v. Bd. of Review of City of Sioux City*, 253 N.W.2d 86, 93 (Iowa 1977). Unadjusted sale prices ranged from \$525,000 to \$1,300,000, or \$69.97 per square foot to \$238.90 per square foot. The sale prices were adjusted to time of sale, building size, quality of construction, age/condition and site to building ratio. Adjusted sale prices ranged from \$195,810 to \$428,400. The sale prices of the building only were estimated at \$150,000 to \$300,000, or \$17.49 to \$80.10 per square foot. Adjusted sale prices of the building only were estimated at \$22.83 to \$85.23 per square foot.

While the Board of Review did not offer an explanation for the subject property's reassessment, in Lustraaf's opinion the declaration of value from the MMDT purchase triggered the increase in assessment from \$245,500 in 2007 to \$425,000 in 2008, a non-reassessment year, suggesting discriminatory treatment or selective reassessment² of the subject property. Viewing the evidence as a whole, we are persuaded that MMDT provided sufficient evidence to support its claim that the property is assessed for more than authorized by law.

Accordingly, we find the subject property is over-assessed as of January 1, 2009. The best evidence of the fair market value is the appraisal and the allocated purchase price of the subject property. The preponderance of the evidence supports a conclusion of over-assessment and indicates a fair market value of \$260,000 as of January 1, 2009.

Conclusion of Law

The Appeal Board applied the following law.

The Appeal Board has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A (2009). This Board is an agency and the provisions of the Administrative Procedure Act apply to it. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). The Appeal Board determines anew all questions arising before the Board of Review related to the liability of the property to assessment or the assessed amount. § 441.37A(3)(a). The Appeal Board considers only those grounds presented to or considered by the Board of Review. § 441.37A(1)(b). But new or additional evidence may be introduced. *Id.* The Appeal Board considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-vee, Inc. v. Employment*

² Selective reassessment, also referred to as "reassessment upon sale," has been found by the U.S. Supreme Court to be a violation of the equal protection clause of the Constitution. *Allegheny Pittsburgh Coal Co. v. County Commission of Webster County*, 488 U.S. 336, 109 S.Ct. 633 (1989).

Appeal Bd., 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption that the assessed value is correct. § 441.37A(3)(a).

In Iowa, property is to be valued at its actual value. Iowa Code § 441.21(1)(a). Actual value is the property's fair and reasonable market value. *Id.* "Market value" essentially is defined as the value established in an arm's-length sale of the property. § 441.21(1)(b). Sale prices of the property or comparable properties in normal transactions are to be considered in arriving at market value. *Id.* If sales are not available or market value "cannot be readily established in that manner," "other factors" may be considered in arriving at market value. *Heritage Cablevision v. Board of Review of City of Mason City*, 457 N.W.2d 594, 597 (Iowa 1990); Iowa Code § 441.21(2). The assessed value of the property "shall be one hundred percent of its actual value." § 441.21(1)(a).

In an appeal that alleges the property is assessed for more than the value authorized by law under Iowa Code section 441.37(1)(b), there must be evidence that the assessment is excessive and the correct value of the property. *Boekeloo v. Bd. of Review of the City of Clinton*, 529 N.W.2d 275, 277 (Iowa 1995). In *Riley v. Iowa City Bd. of Review*, 549 N.W.2d 289, 290 (Iowa 1996), the Court determined that, "It is clear from the wording of Iowa Code section 441.21(1)(b) that the sales price of the subject property in a normal sales transaction, just as the sale price of comparable property, is to be considered in arriving at market value but does not conclusively establish that value." Although the subject property purchase was part of a multi-parcel transaction, the sale price agreed upon by both parties and allocated to the subject property supports MMTD's position that the property is over-assessed.

Therefore, we modify the MMTD property assessment as determined by the Board of Review. The Appeal Board determines that the property assessment value as of January 1, 2009, is \$260,000, representing \$30,000 in land value and \$230,000 in improvement value.

IT IS THEREFORE ORDERED that the January 1, 2009, assessment as determined by the Pottawattamie County Board of Review is modified to \$260,000, representing \$30,000 in land value and \$230,000 in improvement value, as of January 1, 2009.

The Secretary of the State of Iowa Property Assessment appeal Board shall mail a copy of this Order to the Pottawattamie County Auditor and all tax records, assessment books and other records pertaining to the assessment referenced herein on the subject parcel shall be corrected accordingly.

Dated this 7 day of March 2011.

Jacqueline Rypma
Jacqueline Rypma, Presiding Officer

Karen Oberman
Karen Oberman, Board Chair

Richard Stradley
Richard Stradley, Board Member

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AUDITOR

Certificate of Service	
The undersigned certifies that the foregoing instrument was served upon all parties to the above cause & to each of the attorney(s) of record herein at their respective addresses disclosed on the pleadings on <u>3-7</u> , 201 <u>1</u>	
By:	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> FAX
	<input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Courier
	<input type="checkbox"/> Certified Mail <input type="checkbox"/> Other
Signature	<u>[Signature]</u>